LEGAL ANALYSIS
Minnesota House of Representatives
Research Department
600 State Office Building
St. Paul, MN 55155

Deborah K. McKnight, Legislative Analyst
651-296-5056

Revised: June 2005

Retroactivity of Statutes

New laws enacted by the legislature usually are prospective in their application. Sometimes, however, the legislation affects actions or transactions occurring before or pending at the time the new law was enacted. These laws are known as "retroactive laws."

Not every law that is or appears to be retroactive will be applied retroactively by the courts, however. A new law must satisfy a number of rules in order to be given retroactive effect. These rules are derived from the statute governing retroactive application of laws, from certain state and federal constitutional limitations on retroactivity, and from court decisions interpreting these statutory and constitutional provisions.

This legal analysis explains how these rules operate in Minnesota. Specifically, the legal analysis defines what a retroactive law is, addresses how a law must be drafted to be retroactive, and explains constitutional limits for retroactivity.

Contents

What Is a "Retroactive Law"? 2
How Can the Legislature Indicate that a Law Applies Retroactively? 4
What Constitutional Limits Are There on the Retroactive Application of Laws? 8

This analysis is primarily intended to assist individuals who draft legislation in Minnesota. It also may be helpful to other individuals who, as legislators, legislative staff, attorneys, or lobbyists, are involved in the legislative process in Minnesota.

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Many House Research Department publications are also available on the Internet at: www.house.mn/hrd/hrd.htm.

What Is a "Retroactive Law"?

In the often-cited case *Cooper v. Watson*,[1] the Minnesota Supreme Court defined a retroactive law as a law that:

- takes away or impairs vested rights acquired under existing law;
- creates a new obligation and imposes a new duty; or
- attaches a new disability in respect to past transactions or considerations.

Alternatively, this case said a retroactive law is a law:

- intended to affect transactions that occurred, or rights that accrued, before the law became operative and
- that ascribes to them effects not inherent in their nature, in view of the law in force at the time they occurred.

A typical retroactive law affecting procedural rights is one that lengthens or shortens a statute of limitations and applies to causes of action arising before the law's effective date.[2] A typical retroactive law affecting substantive rights alters a person's legal remedy[3] or a person's right to receive, or duty to pay, benefits or compensation under a preexisting contractual or statutory framework.[4] Retroactive laws address a wide variety of subjects, including judicial and administrative procedures,[5] legal remedies,[6] pension benefits,[7] insurance coverage,[8] criminal

---

[1] 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971).

[2] *See e.g. Lovgren v. Peoples Electric Co.*, 380 N.W.2d 791 (Minn. 1986); *Farm Credit Bank of St. Paul v. Ahrenstorff*, 479 N.W.2d 102 (Minn. App. 1992) (*pet. for rev. denied*, Feb. 27, 1992); *LaVan v. Community Clinic of Wabasha*, 425 N.W.2d 842 (Minn. App. 1988) (*pet. for rev. denied*, Aug. 24, 1988); *Lee v. Industrial Electric Co.*, 375 N.W.2d 572 (Minn. App. 1985) (*aff'd without opinion*, 389 N.W.2d 205 (Minn. 1986)).

[3] *See e.g. Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975) (law altering types of relief available under human rights act); *Peterson v. City of Minneapolis*, 285 Minn. 282, 173 N.W.2d 353 (1969) (application of new comparative negligence law); *Reinsurance Assoc. v. Dunbar Kapple, Inc.*, 443 N.W.2d 242 (Minn. App. 1989) (statute changing the right to seek contribution and indemnity against a tortfeaser); *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988) (application of new discounted damages law).

[4] *See e.g. Duluth Firemen's Relief Assoc. v. Duluth*, 361 N.W.2d 381 (Minn. 1985) (pension benefits); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983) (pension benefits); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994) (unemployment benefits); *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831 (Minn. App. 1994) (*pet. for rev. denied*, June 29, 1994) (negotiable instrument); *Halper v. Halper*, 348 N.W.2d 360 (Minn. App. 1984) (child support).

[5] *Holen v. Mpls.-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 84 N.W.2d 282 (1957); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990).

[6] *See* cases cited in note 3, *supra*.

[7] *See* cases cited in note 4, *supra*.

[8] *Holman v. All Nation Ins. Co.*, 288 N.W.2d 244 (1980); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963).

violations,[9] and property rights.[10] The one thing they all have in common is the purpose or effect of altering a person's or entity's preexisting rights or duties.

Not every new law that affects preexisting situations is "retroactive" within the *Cooper* definition, however. In order to be truly "retroactive," the law must affect a duty that accrued or a right that was vested at the time the law was enacted. For example, in *Halper v. Halper*,[11] the court ruled that it was not retroactive to apply new statutory child support guidelines to parties whose marriage dissolution action was filed before the new law's effective date because the right to receive court-ordered child support (and the obligation to pay it) does not accrue until the final dissolution decree is issued.[12] Additionally, some courts have ruled that a law is not retroactive if it is entirely procedural and merely provides a means to vindicate existing rights. For example, in *American Family Mut. Ins. Co. v. Lindsay*,[13] the Minnesota Court of Appeals ruled that a law limiting administrative remedies for insurance agents whose employment was terminated was entirely procedural and, therefore, could be applied to current agents despite the absence of a legislative declaration of retroactive intent.

---

[9] *See e.g. Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955); *State v. Johnson*, 411 N.W.2d 267 (Minn. App. 1987); *State v. French*, 400 N.W.2d 111 (Minn. App. 1987) (*pet. for rev. denied*, Mar. 25, 1987).

[10] *Peterson v. Humphrey*, 381 N.W.2d 472 (Minn. App. 1986) (*pet. for rev. denied*, Apr. 11, 1986); *In Re Estate of O'Keefe*, 354 N.W.2d 531 (Minn. App. 1984) (*pet for rev. denied* Jan. 4, 1985).

[11] 348 N.W.2d 360 (Minn. App. 1984).

[12] *See also Midwest Family Mutual Insurance Co. v. Bleick*, 486 N.W.2d 435 (Minn. App. 1992) (*remanded on other grounds* July 27, 1992) (claim to automobile insurance benefits did not arise before new law's effective date); and *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988); *and compare Leonard v. Parrish*, 435 N.W.2d 842 (Minn. App. 1989) (right to court judgment had vested because all avenues of appeal were exhausted before new law's effective date).

[13] 500 N.W.2d 807 (Minn. App. 1993) (*pet. for rev. denied*, Aug. 6, 1993). *See also Farmers Union Agency v. Butenhoff*, 808 F. Supp. 677 (D.Minn. 1992).

How Can the Legislature Indicate that a Law Applies Retroactively?

According to Minnesota law, new statutes enacted by the legislature are presumed to apply prospectively, not retroactively. Minnesota Statutes, section 645.21, contains the specific statutory rule on retroactivity:

> *No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.*

In accordance with this law, the courts generally will not give a statute retroactive application unless retroactivity is intended by the legislature and the legislature's intent is expressed clearly and manifestly in the law.[14]

The cases provide some guidance on how the legislature can effectively express its intent that a law be given retroactive effect. For example, using some form of the word "retroactive" in the law's effective date will be a sufficiently clear and manifest expression of legislative intent.[15] Similarly, language in the bill's effective date which makes the bill applicable to "causes of action arising before" or "proceedings commenced or pending on or after" a certain date has been found to be a clear indication that the legislature intends the new law to apply to legal claims arising before the effective date, as long as all avenues of appeal have not yet been exhausted.[16]

If the law's scope of application is ambiguous, the court may look at other indications of legislative intent to reach its determination on retroactivity. In *LaVan v. Community Clinic of Wabasha*,[17] which concerned changes to the medical malpractice statute of limitations, the Court of Appeals elaborated on the types of "indicia of legislative intent" that may support a finding of retroactive legislative intent:

- Contemporaneous legislative history

---

[14] *See e.g. State v. Traczyk*, 421 N.W.2d 299 (Minn. 1988); *Parish v. Quie*, 294 N.W.2d 317 (Minn. 1980); *In re Estate of Murphy*, 293 Minn. 298, 198 N.W.2d 570 (1972); *Cooper v. Watson*, 290 Minn. 362, 187 N.W.2d 689 (1971); *Chapman v. Davis*, 233 Minn. 62, 45 N.W.2d 822 (1951); *State v. Industrial Tool & Die Works, Inc.*, 220 Minn. 591, 21 N.W.2d 31 (1945) (*rehearing denied* Jan. 2, 1946); *State Dept. Of Labor v. Wintz Parcel Dr.*, 555 N.W.2d 908 (Minn. App. 1996); *Larson v. Wilcox*, 525 N.W.2d 589 (Minn. App. 1994); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994); *Ind. Sch. Dist. No. 622 v. Keene Corp.*, 495 N.W.2d 244 (Minn. App. 1993) (*rev'd, in part, on other grounds*, 511 N.W.2d 728 (Minn. 1994)); *Thompson Plumbing Co., Inc. v. McGlynn Co., Const. Mort. Inv. Co., Inc.*, 486 N.W.2d 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099); *In re Estate of Edhlund*, 444 N.W.2d 861 (Minn. App. 1989); *State v. Harstad*, 397 N.W.2d 419 (Minn. App. 1986); *Lee v. Industrial Electric Co.*, 375 N.W.2d 572 (Minn. App. 1985) (*aff'd without opinion*, 389 N.W.2d 205 (Minn. 1986)).

[15] *Duluth Firemen's Relief Ass'n v. Duluth*, 361 N.W.2d 381 (Minn. 1985).

[16] *See LaVan v. Community Clinic of Wabasha*, 425 N.W.2d 842 (Minn. App. 1988) (*pet. for rev. denied*, Aug. 24, 1988); and *Olsen v. Special School Dist. No. 1*, 427 N.W.2d 707 (Minn. App. 1988).

[17] *Supra* note 16; see also *Laue v. Production Credit Ass'n*, 390 N.W.2d 823 (Minn. App. 1986) (mandatory farmer-lender mediation law applies to foreclosure proceedings commenced before the law's effective date, despite a lack of explicit language in the law regarding retroactive effect).

- The occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained

- The fact that the new law applied to existing causes of action but had an effective date that was explicitly delayed, thereby permitting a plaintiff, for a period of time, to come within the application of the previous law[18]

Exception for Clarifying or Curative Laws

There is one major exception to the rule that laws are presumed to have prospective application and that legislative intent on retroactivity must be "clear and manifest." This exception applies to laws found by the courts to be "merely clarifying or curative." According to this analysis, a clarifying law does not change an existing law or substantively broaden it to include new matters but, instead, corrects a law to reflect the law's original, preexisting intent. These corrections may have been made:

- because the existing law inadvertently failed expressly to cover a particular issue;[19]

- because the earlier law contained a manifest error or was ambiguous in its coverage and, therefore, needed language refinement;[20] or

- because the existing law contained general language that was later found to need more specificity.[21]

The most common reason why such a correction is made, however, is because of legislative dissatisfaction with a judicial interpretation of the language or intent of an existing law. Thus far, the courts have given broad deference to the "correction" by later legislatures of judicial

---

[18] This delay, which affected a new, more restrictive statute of limitations, provided additional support for a finding of retroactive intent because, the court said, it demonstrated that the legislature wanted to provide a "window" of time under which existing claims could be commenced under the old, more liberal limitations period before the more restrictive law took effect. *Compare Lovgren v. Peoples Electric Co.*, 380 N.W.2d 791 (Minn. 1986) (no retroactive legislative intent may be implied from delayed effective date where delay occurred because of automatic August 1 effective date provision and not because of a specific delayed effective date in the legislation).

[19] *Strand v. Special School District No. 1*, 392 N.W.2d 881 (Minn. 1986); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963). However, the courts may refuse to imply retroactive legislative intent where the legislature omitted certain types of transactions in the scope of a new law's coverage and it is unclear whether the omission was purposeful or inadvertent. As the Court of Appeals recently stated, "[A court] cannot supply that which the legislature purposely omits or inadvertently overlooks." (citing *Wallace v. Comm'r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971). *Farm Credit Bank of St. Paul v. Ahrenstorff*, 479 N.W.2d 102, 104 (Minn. App. 1992) (*pet. for rev. denied*, Feb. 27, 1992) (new statute of limitations clearly applied to mortgages entered into before the effective date but did not clearly apply to mortgages foreclosed before the effective date but still subject to deficiency judgment action).

[20] *Rural Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702 (Minn. 1992); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990); and *Jewett v. Deutsch*, 437 N.W.2d 717 (Minn. App. 1989).

[21] *State, by Spannaus v. Coin Wholesalers, Inc.*, 311 Minn. 346, 250 N.W.2d 583 (1976); and *Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975); *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831 (Minn. App. 1994) (*pet. for rev. denied*, June 29, 1994).

interpretations of statutes and have generally given these later-enacted laws retroactive effect on the theory that they are simply clarifications of prior, existing law that the courts had misconstrued.[22]

A ruling that a law is "merely clarifying or curative" is influenced by several factors. For example, the courts will pay attention to language in the bill title or preamble indicating that the bill's purpose is to clarify the law or correct errors. Likewise, the courts will be influenced by the fact that the legislation is a prompt response to a judicial ruling and that the legislative history indicates that the legislature was, in fact, responding to the judicial ruling. Finally, the courts will examine the original legislative history and intent of the earlier law to determine if the later law is merely a correction and not an expansion of the earlier law.

However, the legislature cannot take advantage of this exception to the retroactivity rule simply by characterizing an obviously substantive change to a law as "clarifying" or "corrective" in the bill's title or in the legislative hearings on the bill. The Minnesota courts have made it clear in recent cases that they, not the legislature, will make the final judgment as to a whether a bill is "merely clarifying or curative" by conducting their own independent inquiry and analysis.[23]

Importance of a Clear Indication of Legislative Intent

One simple lesson to be drawn from many "legislative intent" cases is that it is important for legislators and drafters of legislation to consider how they want or expect a proposed law to be applied and, then, to express that intention clearly and explicitly in the legislation. If retroactive application is intended, the law's effective date should say so, by using the word "retroactive" and, where necessary, by using other words explaining the scope of the law's application. The following are common examples of phrases indicating retroactive intent:

- "This act applies to cases filed before... and pending [specify date or time period to be covered]..."
- "This act applies to former and current employees retiring [specify date or time period to be covered]..."

---

[22] *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987); and *Hoben v. City of Minneapolis*, 324 N.W.2d 161 (1982). In contrast, comments by two legislators at committee hearings that the intent of the new law was to clarify rather than change existing law were not persuasive to the court in *Thompson Plumbing Co., Inc. v. McGlynn Co., Const. Mort. Inv. Co., Inc.*, 486 N.W.2d. 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099), where the law change was made in response to changing industry conditions rather than misapplication of the law by the courts.

[23] *See Ubel v. State*, 547 N.W.2d 366 (Minn. App. 1996) (*pet. for rev. denied*, Jan. 6, 1997), in which the court noted that it "is not bound by the legislature's characterization of an amendment as a 'clarification'...To simply adopt the legislature's clarification would constitute an abandonment of our duty to interpret and apply the law. Moreover, the 1993 legislature is not the interpreter of laws enacted by a prior legislature." Id. at 370. *Accord Honeywell v. Minn. Life & Health Ins. Guar.*, 518 N.W.2d 557 (Minn. 1994); *State v. Niska*, 514 N.W.2d 260 (Minn. 1994); *Rural American Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702 (Minn. 1992) (Simonett concurring specially).

- "This act applies to proceedings conducted [specify date or time period to be covered]..."

Moreover, if a new law is intended to clarify or correct an existing statute and is meant to affect transactions undertaken or occurring before the passage of the clarification, it would be wise to make that intent explicit by language in the bill title stating the clarifying purpose of the new law.

Conversely, if only prospective application of the law is intended, it may be worthwhile to make that intent clear and explicit as well. Such explicit language is particularly helpful if the legislature wants to avoid a later court decision implying retroactive application under the "clarifying or curative law" exception.

Prospective application can be indicated clearly by the following types of language in the law's effective date:

- "This act applies to causes of action accruing on or after..."
- "This act applies to proceedings commenced on or after..."
- "This act applies to agreements entered into on or after..."

What Constitutional Limits Are There on the Retroactive Application of Laws?

Even if a law is clearly and manifestly intended by the legislature to have retroactive effect, the courts may refuse to give it retroactive effect because of constitutional limitations. These limits are derived from three separate constitutional provisions: the prohibition against the unconstitutional impairment of contract rights, the protection of vested interests under the due process clause, and the prohibition against *ex post facto* laws.

Prohibition Against the Unconstitutional Impairment of Contract Rights

Both the federal and state constitutions limit the power of the state to impair or modify contractual rights.[24] However, the courts have not interpreted these provisions to create an absolute prohibition against contract impairments; rather, they have ruled that the state reserves some power to modify contract terms when the public interest requires.[25]

The courts use a two-pronged analysis to decide whether retroactive application of a statute violates the constitutional protection of contract rights. First, they determine whether the interests affected by the law are the type of rights covered by the contract clause's protections. If so, they then determine whether the impairment of those rights is unconstitutional. This second inquiry is, itself, multi-faceted and examines three issues:

- Whether the impairment is substantial
- Whether the state has demonstrated a significant and legitimate public purpose behind the legislation
- Whether the adjustment of rights and responsibilities of the contracting parties is based on reasonable conditions and is of a character appropriate to the public purpose justifying adoption of the law[26]

This latter three-part test is applied with more scrutiny where the state itself is one of the contracting parties than when the law regulates a private contract, because deference to a legislative assessment of reasonableness and necessity is not appropriate when the state's self-interest is at stake.[27]

---

[24] *See* U.S. Const. art. 1, § 10, cl. 1; Minn. Const. art. I, § 11.

[25] *See* *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716, 57 L.Ed. 2d 727 (1978); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983).

[26] *Christensen* at 751 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 97 S. Ct. 1505, 52 L.Ed.2d 92 (1977)).

[27] *Id.*

Are the Interests Affected by the Law Covered by the Contract Clause?

Clearly, if an agreement contains all of the elements required by traditional contract law (i.e., offer, acceptance, and consideration) the interests created by that agreement are covered by the contract clause.[28] If, however, the law affects only the remedy and not the contractual rights themselves, the protections of the contract clause do not apply.[29]

In addition, state legislation may, itself, give rise to a contractual obligation when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the state. However, a party asserting the creation of a contract must "overcome the well-established presumption that a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise."[30]

Finally, regardless of legislative intent, a contractual obligation protected by the contract clause may be created by operation of law through the doctrine of promissory estoppel.[31] For example, in *Christensen*, the Minnesota Supreme Court was asked to decide whether a retired public employee's pension could be discontinued by a legislative act changing eligibility requirements. The court ruled that the public pension rights of a retired employee were quasi-contractual, due to the employee's reasonable and detrimental reliance on the state's promise to pay them. The court then ruled that the contract clause of the Minnesota Constitution applies to quasi-contractual obligations created by promissory estoppel.[32]

Is the Impairment of Contract Rights Unconstitutional?

Not all impairments of contractual rights by the state are unconstitutional. A judgment on this issue depends on whether the law survives scrutiny under the following three-part test:

- Is the impairment substantial?
- If so, has the state demonstrated a significant and legitimate public purpose behind the legislation?

---

[28] *Christensen* at 747.

[29] *Laue v. Production Credit Ass'n*, 390 N.W.2d 823 (Minn. App. 1986) (application of mandatory farmer-lender mediation proceedings to pending foreclosure actions merely affects remedy, not right).

[30] *Peterson v. Humphrey*, 381 N.W.2d 472, 475 (Minn. App. 1986) (*pet. for rev. denie*d, Apr. 11, 1986) (citations omitted).

[31] The doctrine of promissory estoppel provides that even though one or more of the traditional elements of a legally enforceable contract are missing, a contractual obligation will be implied as a matter of law if one party has made a unilateral promise to another and the other party has reasonably relied on that promise to his or her detriment. The Restatement (Second) of Contracts § 90 (1981).

[32] *Compare Duluth Firemen's Relief Ass'n v. Duluth*, 361 N.W.2d 381 (Minn. 1985) (elements of promissory estoppel not present); *Halverson v. Rolvaag*, 274 Minn. 273, 143 N.W.2d 239 (1966) (no showing of detrimental reliance); *Peterson v, Humphrey*, *supra* (statute permitting individual to repurchase tax-forfeited land conferred mere gratuity and did not create contractual rights).

- If so, is the adjustment of rights and responsibilities of the contracting parties based on reasonable conditions and of a character appropriate to the public purpose justifying adoption of the law?

The answers to these questions depend, to some extent, on the specific facts presented in particular cases. A statute that retroactively applied a workers' compensation insurance law was held to be unconstitutional because it failed the second prong of the test in that there was no significant and legitimate purpose for retroactive redistribution of insurance premiums.[33] In *Christensen*,[34] for example, the court ruled that the termination of the public pension benefits of a retired employee failed the third prong of this test because the state had less drastic alternatives available to meet its budget needs, such as making the changes prospective in application (in this case, only nine employees were in situations similar to that of *Christensen*). In contrast, the Minnesota Court of Appeals ruled in a recent case that a state law increasing mandatory uninsured motorist benefits satisfied all three prongs of this test and, therefore, was not an unconstitutional impairment of contract rights under existing automobile insurance policies.[35]

Protection of Vested Interests under the Due Process Clause

Courts also may refuse to give a statute retroactive application if doing so will deprive a person of a "vested legal interest" in violation of the due process protections of the federal or state constitution.[36] The test for determining whether a particular interest is "vested" and, therefore, subject to constitutional protection was articulated in *Peterson v. City of Minneapolis*,[37] and reaffirmed in *Reinsurance Ass'n v. Dunbar Kapple, Inc.*[38] The court must look at three factors to make this determination:

- the nature and strength of the public interest served by the statute
- the extent to which the statute modifies or abrogates the pre-enactment right
- the nature of the right the statute alters[39]

---

[33] *In re Workers Compensation Refund Western National Mutual Insurance Company*, 46 F.3d 813 (8th Cir. 1995).

[34] *Supra* note 25.

[35] *Midwest Family Mutual Insurance Co. v. Bleick*, 486 N.W.2d 435 (Minn. App. 1992) (law also ruled not retroactive). See also *Drewes v. First National Bank of Detroit Lakes*, 461 N.W.2d 389 (Minn. App. 1990) (*pet. for rev. denied*, Dec. 20, 1990) (law prohibiting debtors from commencing action based on oral contract was not unconstitutional impairment of contract rights even though it was a substantial impairment of those rights).

[36] U.S. Const. amend. XIV, § 1; Minn. Const. art I, § 8.

[37] 285 Minn. 282, 173 N.W.2d 353 (1969).

[38] 443 N.W.2d 242, 247 (Minn. App. 1989).

[39] Although the Minnesota courts rely on the "vested rights" analysis to determine whether due process is violated by a retroactive law, the federal courts are beginning to abandon this approach in favor of the rational basis analysis used in other due process cases. *Honeywell v. Minn. Life and Health Ins. Guar.*, 110 F.3d 547, 554 (8th Cir. 1997) ("[W]e join those who question the continued validity of the vested rights analysis ... [and] rely instead on the more recent Supreme Court pronouncements ... which articulate a rational basis test").

As a general matter, a statute that merely affects the remedy or procedure governing a legal claim may be altered retroactively, consistent with due process.[40] If, however, the change results in the retroactive elimination of a party's accrued claim, the change violates due process. Thus, while the courts have recognized the legislature's power to retroactively lengthen or shorten a statute of limitations, they also have ruled that the legislature may not cut off existing causes of action without providing a reasonable period in which the party can assert the claim before it is time-barred. This "reasonable period" may not be so short as to amount to a practical denial of the opportunity to pursue a claim.[41]

Historically, courts have treated revival of time-barred actions (subjecting a defendant to suit after the original limitation period expires) as a separate issue from retroactively lengthening the limitation period for suits that are not already time-barred.[42]

It is not unconstitutional to revive a time-barred action,[43] but courts are very reluctant to allow this unless the legislative intent is absolutely clear.[44] This intent could be indicated in one of the following ways:

- "Causes of action time-barred by the limitation period applicable on the day before the effective date of this section are revived and may be brought until…"
- "This act applies to causes of action accruing on or after [a date that reaches back to whatever time-barred actions the legislature intends to cover]."

The courts have rejected due process challenges to retroactive laws in the following situations:

- elimination of a requirement that a public hearing be held before an airport is expanded[45]
- change in the trust law's allocation of stock dividends to principal instead of income, as applied to existing trusts[46]

---

[40] See *Peterson*, *supra* note 30. See also *Larson v. Wilcox*, 525 N.W.2d 589 (Minn. App. 1994) (no vested right under statute of repose not to be sued); *Application of Q Petroleum*, 498 N.W.2d 772 (Minn. App. 1993) (*pet. for rev. denied*, July 15, 1993) (no vested right in existing law or cause of action until final judgment has been rendered).

[41] *Willmar v. Short-Elliott-Hendrickson, Inc.*, 475 N.W.2d 73 (Minn. 1991); *Sarafolean v. Kauffman*, 547 N.W.2d 417 (Minn. App. 1996) (*pet. for rev. denied*, July 10, 1996).

[42] *State ex rel. Donovan v. Duluth St. Ry*, 185 N.W. 388, 389 (Minn. 1921).

[43] *Donaldson v. Chase Sec. Corp.*, 13 N.W.2d 1 (1943), *aff'd* 325 U.S. 304, 65 S.Ct. 1137 (1945).

[44] Litigation was required to accomplish the legislative intent to retroactively lengthen the medical malpractice limitation period. *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413 (Minn. 2002).

[45] *Holen v. Mpls-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 84 N.W.2d 282 (1957) (right involved is a public right, not a private right).

[46] *In re Gardner's Trust*, 266 Minn. 127, 123 N.W.2d 69 (1963) (no vested right to a dividend until it is declared and distributed).

- elimination of the contributory negligence rule and substitution of the comparative negligence rule as applied to accidents occurring before a law's effective date[47]
- application of the government's claim against a decedent's homestead for reimbursement of medical assistance benefits paid before death[48]
- application of the 1986 tort reform law's "collateral source" and "discounted damages" provisions to pending actions[49]
- application of the repeal of 1986 tort reform law's discounted damages provision to actions where final judgment was not yet entered[50]
- application of a law preventing a subrogee workers' compensation insurer from asserting indemnity and contribution claims against insureds of insolvent insurers[51]
- retroactive restriction of insurance guaranty association coverage to in-state residents[52] and
- application of a law denying reimbursement for certain "superfund" cleanup costs[53]

Prohibition Against *Ex Post Facto* Laws

The legislature's power to enact laws with retroactive effect is sharply limited in the criminal law area. Both the federal and state constitutions specifically prohibit states from enacting any *ex post facto* law.[54] An *ex post facto* law is a law that:

- applies to events occurring before its enactment; and
- disadvantages the offender affected by it.[55]

---

[47] *Peterson v. City of Minneapolis*, 285 Minn. 282, 173 N.W.2d 353 (1969).

[48] *In re Estate of O'Keefe*, 354 N.W.2d 531 (Minn. App. 1984) (*pet. for rev. denied*, Jan. 4, 1985) (heir's interest in estate is a "mere expectancy" prior to decedent's death).

[49] *Johnson v. Farmers Union Cent. Exchange*, 414 N.W.2d 425 (Minn. App. 1987) (*pet. for rev. denied*, Nov. 24, 1987).

[50] *Lieser v. Sexton*, 441 N.W.2d 805 (Minn. 1989) (repeal of procedural statute did not affect vested rights); *Olsen v. Special School Dist. No. 1*, 427 N.W.2d 707 (Minn. App. 1988) (no vested right to a remedy or to an exemption from it; no vested right to trial court judgment which was still appealable).

[51] *Reinsurance Association v. Dunbar Kapple, Inc.*, 443 N.W.2d 242 (Minn. App. 1989).

[52] *Honeywell v. Minn. Life and Health Ins. Guar.*, 110 F.3d 547 (8th Cir. 1997).

[53] *Application of Q Petroleum*, 498 N.W.2d 772 (Minn. App. 1993) (*pet. for rev. denied*, July 15, 1993).

[54] U.S. Const. art. I, § 10; Minn. Const. art I. § 11.

[55] *Weaver v. Graham*, 450 U.S. 24, 101 S. Ct. 960, 67 L.Ed.2d 17 (1981); *Welfare of B.C.G.*, 537 N.W.2d 489 (Minn. App. 1995); *State v. Moon*, 463 N.W.2d 517 (Minn. 1990). (Although the Minnesota Supreme Court relied on the *Weaver* test in *Moon*, it expressly left open the question whether the Minnesota Constitution's *ex post facto*

The purpose of this constitutional limitation, according to the courts, is to ensure that individuals have fair warning of legislative acts and to restrain arbitrary and, potentially, vindictive prosecution.[56]

Thus, a law is *ex post facto* if it has the purpose or effect of creating a new crime, increasing the punishment for an existing crime, depriving a defendant of a defense available at the time the act was committed, or otherwise rendering an act punishable in a different, more disadvantageous manner than was true under the law at the time the act was committed. In contrast, a law is not *ex post facto* if it merely changes trial procedures or rules of evidence and operates in only a limited and unsubstantial manner to the accused's disadvantage. Additionally, a law is not *ex post facto* if it is a civil, regulatory law and is not sufficiently punitive in purpose or effect as to negate that civil label.

The following cases present examples of laws found by the Minnesota courts to violate the *ex post facto* clause or to potentially raise *ex post facto* concerns:

- An 18-year-old may not be prosecuted in adult court for a crime committed before the effective date of a law eliminating juvenile court jurisdiction over offenders between the ages of 18 and 21. Such a prosecution violates the *ex post facto* clause because it renders the offender's act punishable in a different, more disadvantageous manner than the law would have allowed at the time of his offense.[57]

- An offender's "criminal history score" under the sentencing guidelines may not include a felony point for a previous out-of-state crime which, at the time it was committed, was equivalent to a gross misdemeanor crime under Minnesota law.[58]

- An offender's sentence may not include court-ordered restitution in addition to an executed sentence because the law in effect at the time of defendant's crime did not authorize the imposition of both these sanctions together.[59]

- A statutory defense to a crime may not be eliminated retroactively.[60]

In contrast, the following cases illustrate situations in which the courts found no *ex post facto* violation:

- New parole eligibility guidelines, adopted by the parole board, may be applied constitutionally to an offender who pled guilty to a crime before the guidelines were adopted.[61]

---

clause was more protective than the federal constitution because the issue was not raised by appellant in that case.) *See also Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955).

[56] *Supra* note 55, *Moon* at 521.

[57] *State v. Dugan*, 297 Minn. 374, 211 N.W.2d 876 (1973).

[58] *State v. Johnson*, 411 N.W.2d 267 (Minn. App. 1987).

[59] *State v. French*, 400 N.W.2d 111 (Minn. App. 1987) (*pet. for rev. denied*, Mar. 25, 1987).

[60] *State v. Niska*, 514 N.W.2d 260 (Minn. 1994) (*rehearing denied* May 4, 1994).

- Previous DWI convictions may be used to elevate a defendant's current DWI offense from a misdemeanor to a gross misdemeanor under a new law increasing penalties for repeat offenders.[62]

- A criminal statute of limitations may be lengthened and applied to crimes committed before the effective date of the change if prosecution of that crime was not time-barred as of the new law's effective date.[63]

- Criminal prosecution is permitted under a new ordinance prohibiting residents from keeping wild animals on residential property. The court found no *ex post facto* violation, even though the defendant's activity began before the new ordinance was passed and, in fact, was the reason for the new law. The court noted that the defendant had notice of the new prohibition and was punished only for the part of his conduct that continued after the new law took effect.[64]

- A new law allowing the docketing of court-ordered restitution orders as civil judgments may be applied constitutionally to a defendant who committed the crime before the new law's effective date but who was sentenced after the effective date.[65]

- A new law eliminating the applicability of the medical privilege to certain evidence in child abuse cases is not *ex post facto* as applied to proceedings concerning crimes committed before the law's effective date. The law merely affects the type of evidence that is admissible; it neither creates a new crime nor changes the standard of proof.[66]

- Application of a new law providing state procedures for imposing federal firearms restrictions on convicted offenders does not violate the *ex post facto* clause because (1) the provision does not create a new crime or impose a harsher punishment and (2) the defendant was on constructive notice before the new law was enacted that he would be subject to even harsher federal restrictions if convicted for his ongoing criminal acts.[67]

---

[61] *Kochevar v. State*, 281 N.W.2d 680 (Minn. 1979). *See also State v. Swenson*, 243 Minn. 46, 66 N.W.2d 337 (1954) (*overruled in part on other grounds*; *see State v. Tahash*, 129 N.W.2d 903 (Minn. 1964)).

[62] *State v. Willis*, 332 N.W.2d 180 (Minn. 1983); *Accord State v. Gross*, 335 N.W.2d 509 (Minn. 1983).

[63] *State v. Burns*, 524 N.W.2d 516 (Minn. App. 1994) (*pet. for rev. denied*, Jan. 13, 1995).

[64] *State v. Howard*, 360 N.W.2d 637 (Minn. App. 1985). *See also State Dept. of Labor & Industry by Special Compensation Bd. v. Wintz Parcel Drivers, Inc.*, 555 N.W. 2d 908 (Minn. App. 1996) (*rev'd in part*, 558 N.W.2d 480 (1997)) (reduced amount of penalty); *State v. Harrington*, 504 N.W.2d 500 (Minn. App. 1993) (*pet. for rev. denied*, Sept. 30, 1993).

[65] *State v. Larson*, 393 N.W.2d 238 (Minn. App. 1986).

[66] *State v. Friend*, 385 N.W.2d 313 (Minn. App. 1986) (*pet. for rev. denied*, May 22, 1986).

[67] *State v. Moon*, 463 N.W.2d 517 (Minn. 1990).

- A new law requiring a defendant to pay extradition costs does not violate the *ex post facto* clause because its purpose is to reimburse the state for its expenses, not to punish the defendant.[68]

- Laws permitting the civil commitment of sexually dangerous persons and requiring sex offenders to register their living address with law enforcement authorities do not violate the *ex post facto* clause because these laws are civil, regulatory laws that are not sufficiently punitive in purpose or effect so as to negate their civil label.[69]

---

[68] *State v. Blair*, 474 N.W.2d 630 (Minn. App. 1991) (*pet. for rev. denied*, Oct. 11, 1991) (*overruled in part by State v. Lopez-Solis*, 589 N.W.2d 290 (Minn. 1999)) (relating to whether a trial court needs to make a finding that a defendant can pay extradition costs before imposing them).

[69] *Matter of Linehan*, 557 N.W.2d 171 (Minn. 1996) *vacated and remanded*, 522 U.S. 1011, 118 S.Ct. 596 (1997), *cert. den.* 528 U.S. 1049 (1999); *State v. Manning*, 532 N.W.2d 244 (Minn. App. 1995) (*pet. for rev. denied*, July 20, 1995).